

PETITION FOR ZONING VARIANCE
419 Fox Chapel Drive, and 1/2
acre of the new Valley Road
in Fox Chapel Drive
in the Fox Chapel District
in the Fox Chapel District
Subject: Robert P. Biller, et ux
Petitioners

BEFORE THE
ZONING COMMISSIONER
OF BALTIMORE COUNTY
Case No. 91-337-A

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioner herein request, pursuant to a petition for Zoning Variance from Section 421.1 of the Baltimore County Zoning Ordinance (B.C.Z.O.) to permit a kennel for five (5) dogs within an existing single family residence to be located 18 feet from the nearest property line in lieu of the minimum permitted 200 ft., as more particularly described on Petitioners' Exhibit No. 1.

The Petitioners appeared and testified and were represented by William Hesson, Esquire. There were no Protestants.

Testimony indicated that the subject property known as 419 Fox Chapel Drive, consists of .85 acres zoned D.R.1 and is currently improved with an existing single family dwelling and accessory swimming pool. Testimony indicated that the Petitioners are the owners of five (5) Shih Tzu dogs which they keep as pets.

Proffered testimony indicated that the Petitioners have no intention of breeding, selling or maintaining the dogs for show purposes. The uncontested testimony indicated that the subject dogs spend 90% of their time within the Petitioners' dwelling and are in the back yard for brief periods of time for exercise. There have been no accessory structures placed

in the rear yard in the nature of dog houses or pens as a result of the dogs.

The Petitioners had, prior to the hearing on this matter, entered into extensive negotiations with the Fox Chapel Community Association, Inc. regarding restrictive covenants between the Petitioners and said Association (see Petitioners' Exhibit No. 1).

Mrs. John Owen, Chairman of the Board of Governors for said Association, appeared, testified and indicated that the Association was satisfied with the agreement worked out with the Petitioners and were confident that the granting of the requested relief would, in no way, be a detriment to this community.

An area variance may be granted where strict application of the zoning regulations would cause practical difficulty to the Petitioner and his property. McLean v. Soley, 210 Md. 208 (1973). To prove practical difficulty for an area variance, the Petitioner must meet the following:

- 1) whether strict compliance with requirement would unreasonably prevent the use of the property for a permitted purpose or render conformance unnecessarily burdensome;
- 2) whether the grant would do substantial injustice to applicant as well as other property owners in the district or whether a lesser relaxation than that applied for would give substantial relief; and
- 3) whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

Anderson v. Bd. of Appeals, Town of Chesapeake Beach, 22 Md. App. 28 (1974).

It is clear from the testimony that if the variance is granted, such use as proposed would not be contrary to the spirit of the B.C.Z.O. and

would not result in substantial detriment to the public good. Section 1802.1 of the B.C.Z.O. permits kennels in the D.R.1 zone as a matter of right. However, Section 421.1 of the B.C.Z.O. requires that any such kennel be located no closer than 200 ft. from the nearest property line. Clearly, although the Petitioners reside in a D.R.1 zone, they possess insufficient acreage to meet the 200 ft. setback requirement.

However, after due consideration of the testimony and evidence presented, it is clear that a practical difficulty or unreasonable hardship would result if the variance was not granted. It has been established that the requirements from which the Petitioners seek relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. In addition, the variance requested will not be detrimental to the public health, safety and general welfare.

Pursuant advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner for Baltimore County this 15th day of May, 1991 that, pursuant to Petition for Zoning Variance, a variance from Section 421.1 of B.C.Z.O. to permit a kennel for five (5) dogs within an existing single family residence to be located 18 feet from the nearest property line in lieu of the minimum permitted 200 ft., in accordance with Petitioners' Exhibit No. 1, is hereby GRANTED, subject, however, to the following restriction which are conditions precedent to the relief granted herein:

1. The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30 day appellate process

from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

2. The Petitioners shall not replace any of the five (5) original dogs (referenced in Petitioners' Exhibit No. 5) currently on the property until such time as the number of said dogs in Petitioners' household is less than three (3). At such time, Petitioners may maintain a maximum of no more than three (3) dogs on the subject property.

3. Upon request and reasonable notice, the Petitioner shall permit a representative of the Zoning Enforcement Division to make an inspection of the subject property to insure compliance with this Order.

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner
for Baltimore County

JRH:mmn
cc: Peoples Counsel

ORDER RECEIVED FOR FILING
Date 5/16/91
By [Signature]

ORDER RECEIVED FOR FILING
Date 5/16/91
By [Signature]

ORDER RECEIVED FOR FILING
Date 5/16/91
By [Signature]

ORDER RECEIVED FOR FILING
Date 5/16/91
By [Signature]

PETITION FOR ZONING VARIANCE
TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY: 91-337-A

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section 421.1 to permit a kennel for 5 dogs within an existing single family residence to be located 18 feet from the nearest property line in lieu of the minimum permitted 200 ft.

of the Zoning Regulations of Baltimore County to the Zoning Law of Baltimore County for the following reasons: (indicate hardship or practical difficulty)

See Attached

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc. upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law For Baltimore County.

I do so solemnly declare and affirm, under the penalties of perjury, that I we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: _____
(Type or Print Name)
Signature _____
Address _____
City and State _____
Legal Owner(s):
Mrs. Robert P. Biller
(Type or Print Name)
Signature _____
Robert P. Biller
(Type or Print Name)
Signature _____
419 Fox Chapel Dr. 201-252-1873
Address Phone No.
Timonium Md 21093
City and State
Name, address and phone number of legal owner, contract purchaser or representative to be contacted
Name _____
Address _____
Phone No. _____
Attorney for Petitioner:
(Type or Print Name)
Signature _____
Address _____
City and State _____
Attorney's Telephone No.: _____
Address Phone No. _____

ORDERED By The Zoning Commissioner of Baltimore County, this 15th day of May, 1991, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 25th day of April, 1991, at 10:00 o'clock

J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner of Baltimore County
(over)

ORDER RECEIVED FOR FILING
Date 5/16/91
By [Signature]

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

May 15, 1991

William M. Hesson, Jr., Esquire
Suite 1105 Hampton Plaza
300 E. Joppa Road
Towson, Maryland 21204

RE: Petition for Zoning Variance
Case No. 91-337-A
Robert P. Biller, et ux, Petitioners

Dear Mr. Hesson:

Enclosed please find the decision rendered in the above captioned case. The Petition for Zoning Variance has been granted, in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,
J. Robert Haines
J. ROBERT HAINES
Zoning Commissioner

JRH:mmn
att:
cc: Peoples Counsel
cc: Mr. and Mrs. Robert P. Biller

February 10, 1991

Baltimore County Zoning Commission
Towson, Maryland

Reference: Petition for Zoning Variance - Hardship or Practical Difficulty.

We (Mr. and Mrs. Robert P. Biller of 419 Fox Chapel Drive, Timonium, Maryland), ask for a variance to the Baltimore Zoning Regulations section 421. We have five Shih Tzu pet dogs. These dogs live inside our private home, on a one acre lot which is fenced in the back yard. The pets came with us when we moved to Timonium from Massachusetts. After reading the covenants of the community which referenced Baltimore County regulations regarding the number of pets. Animal Control and zoning regulations were checked, before purchase of property. We were told it would be necessary to obtain a Kennel License and that this area is zoned such to allow for this type of permit. A license has been granted to us in response to our request for a Fancier's Permit in August (Permit 117A).

In October, a complaint was made by a member of the Community Association based upon their feeling of an infraction (after speaking to the community association, we do not understand this to be a personal complaint about the dogs). The immediate neighbors do not have a complaint against the dogs. The dogs are in the home at least 90% of the time, and they are looked after when in the back yard. The dogs and lawn area are kept clean.

We would feel a hardship to have to part with any of the five dogs, since they are beloved pets. We do not plan to increase the number, nor to replace to maintain more than three following the original five, for which we ask for a variance. In summary, the significant factors are:

- 1) The dogs reside in the home, and spend little time outside. There are no pens or dog houses of any kind.
- 2) It is not a commercial enterprise, but a private home with pets.
- 3) The immediate neighbors have not complained, and in fact have not voiced any concern when asked directly. Please reference signed letters by immediate neighbors.
- 4) The five dogs are small and only total 65 pounds.
- 5) The dogs, home and fenced yard are kept very clean.

Thank you for your consideration in this matter.

Robert P. Biller

ZONING DESCRIPTION

BEGINNING AT A POINT IN THE S. SIDE OF FOX CHAPEL DRIVE, 50 WIDE, AT A DISTANCE OF 200 FEET WEST OF THE CENTERLINE OF DUNN VALLEY RD., BEING KNOWN AND DESIGNATED AS Lot No. 2, Block D, on the Plat of "FOX CHAPEL, Section 1", which is recorded among the Land Records of Baltimore County in Plat Book GLB No. 25, folio 42 (erroneously referred to as GLB No. 22, folio 45). The improvements thereon being known as No. 419 Fox Chapel Drive.

IN THE 8TH ELECTION DISTRICT.
LOT SIZE - 85 ± AC.

91-337-A

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 11 Date of Posting: 4-5-91
Posted for: Robert P. Biller
Petitioner: Robert P. Biller
Location of property: 5/5 Fox Chapel Drive, 200' W of Dulany Valley Road
Location of Sign: 419 Fox Chapel Drive
Remarks: 8th Election District
Posted by: J. Robert Haines Date of return: 4-22-91
Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD., 4-1-91

THIS IS TO CERTIFY, that the annexed advertisement was published in TOWSON TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 3-28-91.

TOWSON TIMES,

S. Zeke Olson
Publisher

\$ 84.29

NOTICE OF HEARING
The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 West Chesapeake Avenue in Towson, Maryland 21204 as follows:

Case number: 91-337-A
S/S Fox Chapel Drive, 200' W of Dulany Valley Road
419 Fox Chapel Drive
8th Election District
Petitioner(s):
Robert P. Biller, et ux
Hearing Date: Thursday, April 25, 1991 at 2:00 p.m.

Variance: to permit a kennel for 5 dogs within an existing single family residence to be located 18 feet from the nearest property line in lieu of the minimum permitted 200 feet.

J. ROBERT HAINES
Zoning Commissioner of Baltimore County
TJJEFF/3/28 Mar. 28

CERTIFICATE OF PUBLICATION

TOWSON, MD., 4-1-91

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 3-28-91.

THE JEFFERSONIAN,

S. Zeke Olson
Publisher

\$ 84.29

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R 001-6150
Number

Date

Please Make Checks Payable To: Baltimore County
RECEIVED 4/5/91

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R 001-6150
Number

Date

Please Make Checks Payable To: Baltimore County

receipt

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

DATE: 4-5-91

Mr. & Mrs. Robert P. Biller
419 Fox Chapel Drive
Timonium, Maryland 21093

RE:

Case Number: 91-337-A
S/S Fox Chapel Drive, 200' W of Dulany Valley Road
419 Fox Chapel Drive
8th Election District - 4th Councilmanic
Petitioner(s): Robert P. Biller, et ux
HEARING: THURSDAY, APRIL 25, 1991 at 2:00 p.m.

Dear Petitioner(s):

Please be advised that \$ 109.29 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please make your check payable to Baltimore County, Maryland. Bring the check and the sign & post set(s) to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland fifteen (15) minutes before your hearing is scheduled to begin.

J. Robert Haines

J. ROBERT HAINES
ZONING COMMISSIONER
BALTIMORE COUNTY, MARYLAND

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

March 1, 1991

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland 21204 as follows:

Case Number: 91-337-A
S/S Fox Chapel Drive, 200' W of Dulany Valley Road
419 Fox Chapel Drive
8th Election District - 4th Councilmanic
Petitioner(s): Robert P. Biller, et ux
HEARING: THURSDAY, APRIL 25, 1991 at 2:00 p.m.

Variance to permit a kennel for 5 dogs within an existing single family residence to be located 18 feet from the nearest property line in lieu of the minimum permitted 200 feet.

J. ROBERT HAINES
Zoning Commissioner of
Baltimore County

cc: Mr. & Mrs. Robert P. Biller

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

April 10, 1991

Mr. & Mrs. Robert P. Biller
419 Fox Chapel Drive
Timonium, MD 21093

RE: Item No. 318, Case No. 91-337-A
Petitioner: Robert P. Biller, et al
Petition for Zoning Variance

Dear Mr. & Mrs. Biller:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

IT WOULD BE APPRECIATED IF YOU WOULD RETURN YOUR WRITTEN COMMENTS TO MY OFFICE, ATTENTION JULIE WINIARSKI. IF YOU HAVE ANY QUESTIONS REGARDING THIS, PLEASE CONTACT HER AT 887-3391.

Very truly yours,
James E. Dyer
JAMES E. DYER
Chairman
Zoning Plans Advisory Committee

JED:jw

Enclosures

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning

111 West Chesapeake Avenue
Towson, MD 21204

887-3353

Your petition has been received and accepted for filing this
27th day of February, 1991.

J. Robert Haines
J. ROBERT HAINES
ZONING COMMISSIONER

Received By:

James E. Dyer
Chairman,
Zoning Plans Advisory Committee

Petitioner: Robert P. Biller, et ux

Petitioner's Attorney:

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

TO: J. Robert Haines
Zoning Commissioner

DATE: March 6, 1991

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

SUBJECT: Russell V. Pettiford, Item No. 301
Timothy D. Brown, Item No. 311
Robert P. Biller, Item No. 318
Lloyd Lee Jordan, Item No. 321
Clyde P. Jackson, Item No. 322

In reference to the Petitioners' requests, staff offers no comments.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL/cmm

NCVARIED/ZAC1

Received
3/2/91

received
3/12/91

JB/BEE

RWB:8

received
3/98/91

We have no guarantee that, should the variance be granted, that the number of dogs will be kept to five. Once the license is granted legally, what limits are there on the number of dogs that could be housed in this location.

The covenants of the Fox Chapel Association, Inc. are on file in the Records Office of the County. These covenants empower our Board of Governors with the following restrictions (Paragraph B) of controlling the number of pets which is their opinion: "The owners shall not own more than one dog." County regulations support us in this effort by the zoning required in Dr 1 for the number of dogs in excess of three.

RECEIVED
APR 9 1991
ZONING OFFICE

Thank you
Henry H. Loomis
2114 Starmount Lane

Copy to: Mr. Douglas Riley, Councilman
Peoples Council
Mr. Roger Antaya

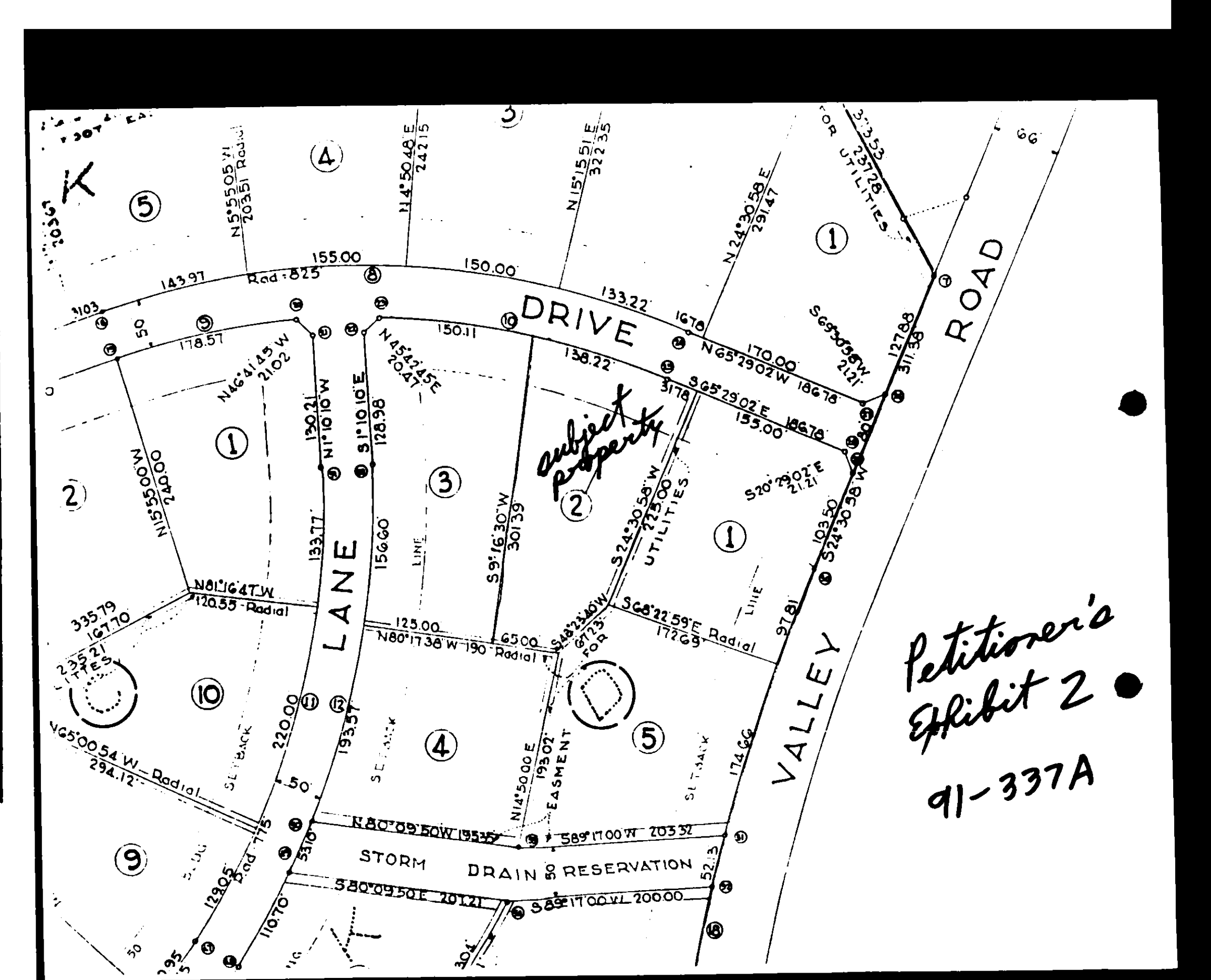
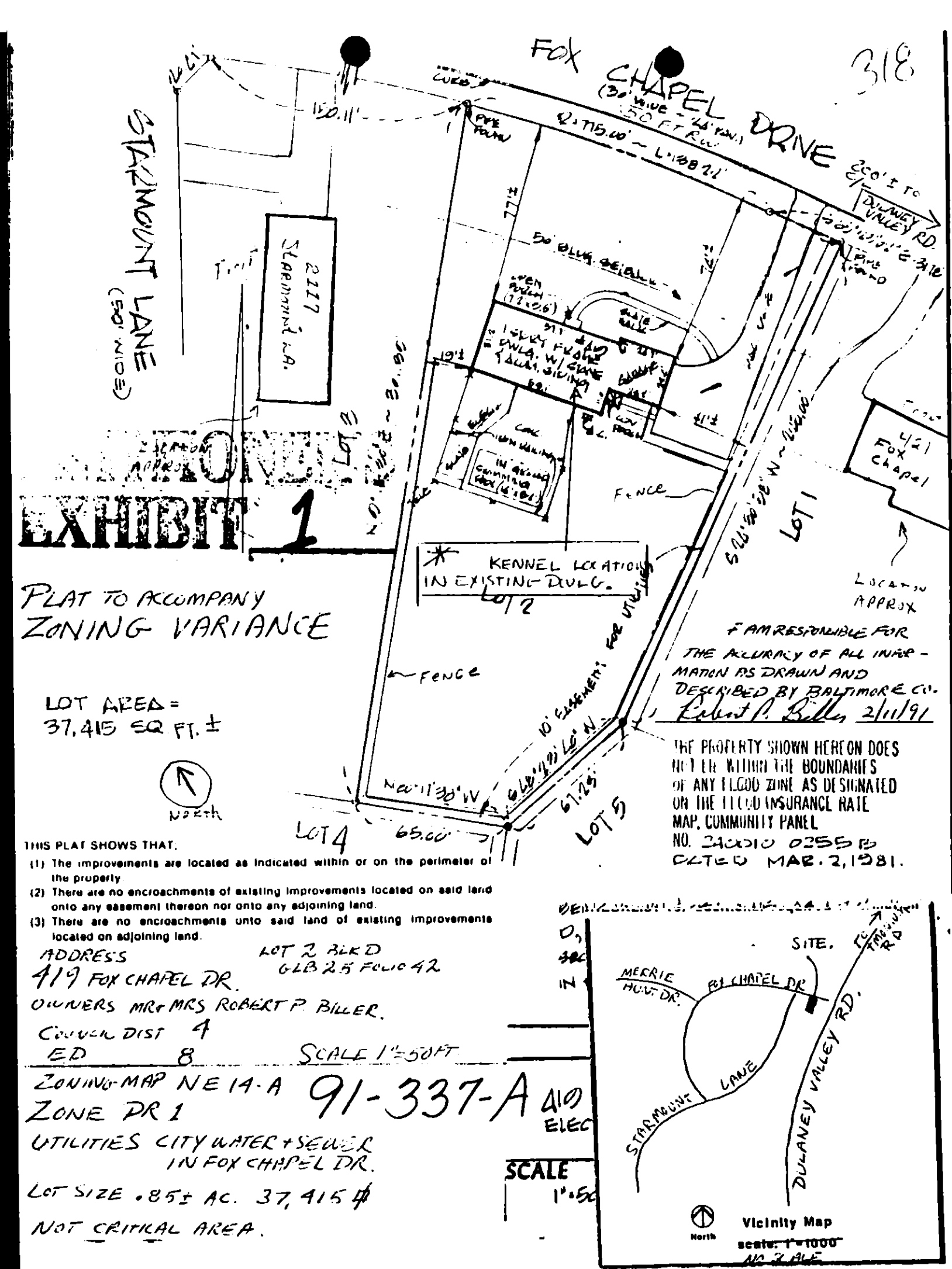
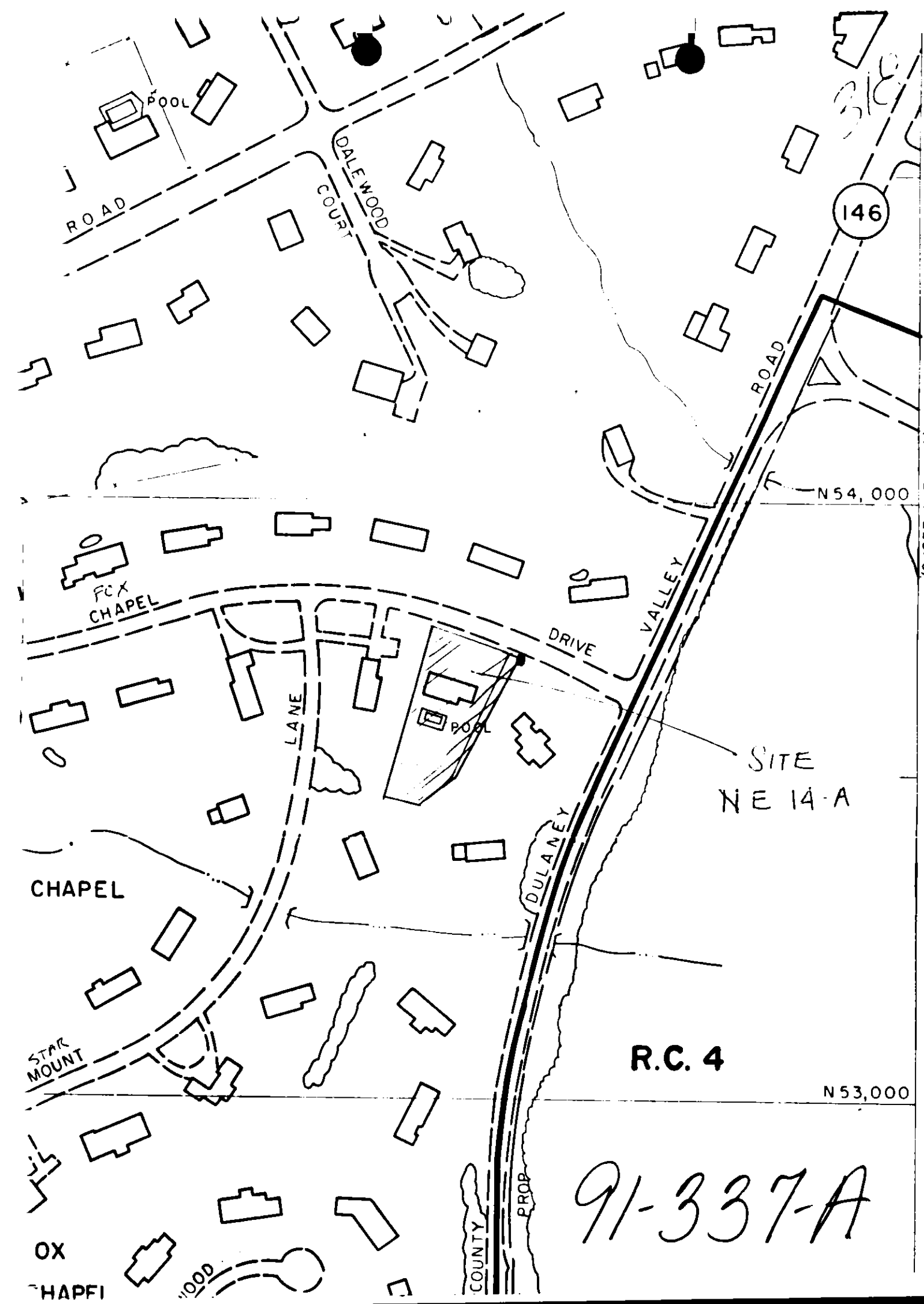
ZUNING OFFICE

91-337A

PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Emily Votel	2116 Dubuque Valley Rd
Jane Roman	418 4th Chapel Dr.
Rose D. Burckhardt	2117 Starmount Lane
John F. Burckhardt	2117 Starmount Lane
Robert Burckhardt	444 1st Chapel Dr.
Dennis J. Burckhardt	444 1st Chapel Dr.
Thomas J. Burckhardt	2103 Starmount Ln
Robert Burckhardt	3 Cedarview Cr
J. Burckhardt	508 Starmount Lane 2109
Thomas J. Burckhardt	2105 Starmount Lane 2109



CASE NUMBER 91-337-A



PETITIONER'S EXHIBIT #

CASE NUMBER 91-337-A



PETITIONER'S EXHIBIT #

CASE NUMBER 91-337-A



PETITIONER'S EXHIBIT #

CASE NUMBER 91-337-A



Looking at Lots #4 & #5



Back looking towards front view of Lot #1

PETITIONER'S EXHIBIT #

PETITIONER(S) EXHIBIT 4

91-337A



PETITIONER(S) EXHIBIT 6

91-337A



PETITIONER'S EXHIBIT 5

RESTRICTIVE COVENANT AGREEMENT

THIS AGREEMENT has been entered into on the 23rd day of April, 1991, by and between ROBERT BILLER and DONNA BILLER, His Wife (hereinafter the "Billers") and THE FOX CHAPEL ASSOCIATION, INC., a Maryland Corporation (hereinafter the "Association").

RECITALS

WHEREAS, The Billers are the owners of and have resided at 419 Fox Chapel Drive in Timonium, Maryland, which is also known as Lot 2, Block D of Plat of Fox Chapel Subdivision, said Plat being recorded in the Land Records of Baltimore County at G.L.B. No. 25, Folio 42. The Billers' deed to said property is recorded amongst the Land Records of Baltimore County at Liber S.M. No. 8331, Folio 601. Said property is zoned D.R.1; and

WHEREAS, The Billers have erected a wooden fence around the perimeter of their property; and

WHEREAS, The Billers are the owners of five Shih Tzu dogs which reside with the Billers at 419 Fox Chapel Drive; and

WHEREAS, The Billers have a Baltimore County Fancier's License for the keeping of said dogs, it being the requirement that the keeping of more than three (3) dogs in one household such as the Billers' five (5) dogs requires said license and permit; and

91-337A

January 29, 1991

Baltimore County Zoning Commission
Towson, Maryland

Dear Sirs:

This letter is to acknowledge my awareness that my neighbors, Mr. & Mrs. Robert Biller of 419 Fox Chapel Drive, Timonium, Md. have five Shih Tzu dogs in their home. I wish to acknowledge that this situation does not disturb me and I see no reason why they should not be allowed to maintain these pets in their home.

Sincerely,

PETITIONER'S EXHIBIT 7

91-337A